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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
21st CENTURY ONCOLOGY HOLDINGS, INC., *et al.*,	)	Case No. 17-22770 (RDD)
Reorganized Debtors.	)	(Jointly Administered)

MOTION TO CONFIRM CERTAIN DOCUMENTS ARE NOT PRIVILEGED AND, IF NECESSARY, COMPELLING ADDITIONAL RELATED DISCOVERY

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Cases

Rules

21st Century Oncology Holdings, Inc., 21st Century Oncology LLC, or 21st Century Oncology Inc. ("21C") respectfully move the Court for an order (i) confirming that the communications cited herein (referred to in this motion as the "Dosoretz Emails") and enclosed as Exhibits B through G between Daniel "Danny" Dosoretz or Florida Plaintiffs[1] and attorneys at Shumaker, Loop and Kendrick LLP ("Shumaker") are not privileged and (ii), if additional discovery is required by the Court, compelling Danny Dosoretz, Shumaker, and the Florida Plaintiffs to submit to additional discovery related to the Dosoretz Emails.

INTRODUCTION

Newly-discovered documents on 21C's company server and devices have revealed that the Florida Plaintiffs made false and misleading statements to the Court about their knowledge of the claims brought in the Florida Action and their intentions to bring claims against 21C prior to the Effective Date. [redacted] The Florida Plaintiffs then knowingly and intentionally waited until after the Effective Date and the closure of the bankruptcy case to bring their claims and brazenly declared to this Court that it was inconceivable that they could have even known about these claims before the Effective Date.

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[1] This motion accompanies and is made in the alternative to 21C's Motion for Reconsideration, which is being filed contemporaneously with this motion. Unless otherwise indicated, capitalized terms in this motion have the same definition as capitalized terms in the Motion For Entry Of An Order (I) Enforcing The Plan And Confirmation Order, Including The Plan Injunction And Third-Party Release; (II) Holding Dr. Arie Pablo Dosoretz, Dr. Amy Fox, Dr. Michael J. Katin, And James H. Rubenstein In Contempt; (III) Imposing Sanctions; And (IV) Granting Related Relief (the "Motion to Enforce").

21C seeks an order from this Court confirming that the Dosoretz Emails are not subject to attorney-client privilege because Danny Dosoretz had no reasonable expectation of privacy in communications sent via 21C's server and devices, and that any claim of privilege or other legal protection over the Dosoretz Emails or related materials is barred under the crime-fraud exception because these materials demonstrate fraud perpetrated on 21C's equity investors, creditors, and the Court.

In parallel with this Motion, 21C has requested that the Court reconsider its decision authorizing the parties to conduct discovery because that decision relied on the Florida Plaintiffs' false representations, and to grant the Reorganized Debtors' pending Motion to Enforce. If the Court denies 21C's Motion for Reconsideration and determines that additional discovery is necessary in this proceeding, 21C also requests an order compelling the Florida Plaintiffs, Danny Dosoretz, and Shumaker to allow discovery into the Dosoretz Emails and related material.

BACKGROUND

1. On April 24, 2019, Reorganized Debtors filed the Motion to Enforce seeking an order barring the Florida Plaintiffs from pursuing their challenge to their Non-Compete Provisions because any such claims were barred when their contracts were assumed as part of 21C's Bankruptcy. Dkt. #1326.

2. On May 8, 2019, Florida Plaintiffs filed a response to the Motion to Enforce. Dkt. 1333.[2] Florida Plaintiffs argued to this Court that they had no intention of leaving employment with 21C and had not considered antitrust claims against 21C prior to the Effective Date. Florida Plaintiffs further argued that it was "nonsensical" to think that they could have even conceived of

[2] Response to Motion in Opposition to Reorganized Debtors' Motion for the Entry of an Order (1) Enforcing the Plan and Confirmation Order, Including the Plan Injunction and Third-Party Release; (II) Holding Dr. Arie Pablo Dosoretz, Dr. Amy Fox, Dr. Michael J. Katin and Dr. James H. Rubenstein in Contempt; (III) Imposing Sanctions; and (IV) Granting Related Relief.

the possibility of bringing claims related to their employment at the time they received their Assumption Notices. *Id.* ¶ 79. Further, Florida Plaintiffs argued that it was "pure folly" to imagine that they "(i) could have theorized a set of facts under which they would resign, (ii) would have predicted all facts under which 21C's market monopolization would exist more than one year henceforth, (iii) could have retained experts to conduct a market monopoly study to assess impact on an in futuro enforceability of the non-compete agreements, and then (iv) be in a position to argue that a case or controversy existed sufficient to litigate future enforceability under theorized facts that would not ripen for more than a year." *Id.* ¶ 40.

3. In declarations filed in support of their Response, Florida Plaintiffs swore: "As of January 16, 2018, it did not occur to me to challenge my contract." Dkt. 1335 at 67 (Arie Dosoretz Decl. ¶ 4), 70 (Rubenstein Decl. ¶ 6), 72 (Katin Decl. ¶ 6), 74 (Amy Fox. Decl. ¶ 6). Plaintiff Arie Dosoretz swore further: "As of January 16, 2018, I had not taken any steps to enter the market for providing radiation oncology services in Lee, Collier, or Charlotte Counties, Florida, in competition with 21C and had not considered doing so." Dkt. 1335[3] at 67 (Arie Dosoretz Decl. ¶ 6).

4. The Court then held a hearing and ordered the parties to conduct discovery on what the Florida Plaintiffs understood at the time the Court entered the Plan. May 15, 2019 Hearing Tr. (Ex. A) 20:5-7 ("If people want discovery on that, what people understood at the time, you know, they should do that."); *id.* 20:23-24 (in which the court compared this discovery to another case where "we had discovery about what the parties understood"); *id.* 24:25-25:1 (ordering discovery on "[a]ll of the bankruptcy content, what people understood this to be").

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[3] Notice Of Filing Declarations In Further Support Of Response In Opposition To Motion To Enforce (Doc. 1326) And Response In Opposition To Motion To Stay (Doc. 1328).

5. The Reorganized Debtors own and operate an email server and issue company-owned devices for use by company employees for business purposes. Employees who utilize 21C's technology are subject to the policies set out in the company's Employee Handbook. (de Paz Decl. ¶ 10); Ex. H.

6. As an employee of 21C, Danny Dosoretz and the Florida Plaintiffs were subject to the policies in the Employee Handbook, and in his capacity as the President and CEO of 21st Century Oncology, Inc., Danny Dosoretz signed the introduction to the Employee Handbook. In that introduction, Danny Dosoretz explained that the Employee Handbook "was developed to describe some of the expectations of our employees and to outline the policies, programs and benefits to eligible employees" and admonished employees to "familiarize yourself with the handbook." Ex. H.

7. The Employee Handbook contains certain policies related to "Electronic Communication Devices." Specifically, the Employee Handbook confirms that: (1) 21C employees "should have no expectation of privacy when using company-owned or company-leased equipment," and (2) "[i]nformation passing through or stored on company equipment can and will be monitored." Ex. H.

8. Consistent with the Employee Handbook, information sent through 21C's email server or through a company device has been and is monitored and reviewed by the company. (de Paz Decl. ¶¶ 6, 8.)

9. Employees who utilize company-owned and issued devices are required to return such devices when their employment with 21C terminates, and Danny Dosoretz returned his company-issued laptop to 21C after resigning without dispute. (de Paz Decl. ¶¶ 11, 16.)

10. In the course of identifying information relevant to this action, 21C collected and reviewed data sent through the company's server and stored on company devices. The collection included emails and attachments that Danny Dosoretz sent through the company's server using a 21C email address and emails and attachments that were stored on the company-owned laptop that was issued to Danny Dosoretz for business purposes. (de Paz Decl. ¶ 17.)

11. Danny Dosoretz's company-owned laptop contained certain of his emails from a Gmail account because he took steps to affirmatively link his personal email with 21C's Microsoft Outlook application running on the 21C-owned laptop. (de Paz Decl. ¶ 15; Gorczyk Decl. ¶ 14-15.) 21C's access to these emails did not in any way involve the search or collection of emails from any web-based program or any password protected applications. (Gorczyk Decl. ¶ 16.) To be clear, Danny Dosoretz's personal emails were on 21C's laptop because Danny Dosoretz personally brought those emails into 21C's information solutions hardware and network. (de Paz Decl. ¶ 15; Gorczyk Decl. ¶ 14-15).

12. The Dosoretz Emails reflect that Danny Dosoretz was planning with the Florida Plaintiffs, since well before the Effective Date, to challenge Florida Plaintiffs' Non-Compete Provisions and had taken steps to compete with 21C. Initiated when Danny Dosoretz was still a 21C Board member and fiduciary, the plot to attack 21C evidenced by the Dosoretz Emails constitutes a fraud on 21C's pre-filing equity investors, creditors, and this Court.

ARGUMENT

A. Documents Uncovered on 21C's Own Server and Devices Are Not Privileged

13. The Dosoretz Emails are not privileged because Danny Dosoretz had no reasonable expectation that such communications were private.[4]

[4] Because 21C identified these documents in its own files, it cannot be claimed that these emails were inadvertently disclosed to 21C and thus neither Danny Dosoretz nor any other party has the right to

14. The Federal Rules of Evidence apply in cases under the Bankruptcy Code. FED. R. BANKR.P. 9017; FED.R.EVID. 1101(b). Federal Rule of Evidence 501 states that the federal common law of privileges applies when federal law determines the substantive rights of the parties. FED.R.EVID. 1101(b); *United States v. Zolin*, 491 U.S. 554, 562 (1989). Here, the federal common law of privileges applies because the question of whether privilege applies arose in the process of identifying evidence related to whether the Confirmation Plan bars the claims brought in the Florida Action. Moreover, the underlying claims in this action – those brought in the Florida Action – are similarly governed by federal privilege rules based on federal question jurisdiction flowing from Florida Plaintiffs' antitrust claims. *See von Bulow v. von Bulow*, 811 F.2d 136 (2d. Cir 1987) (finding that asserted privileges in an action involving federal claims, and state claims based on pendent and diversity jurisdiction, is governed by principles of federal law).

15. When a client has no reasonable expectation of privacy in a communication with his lawyer, the attorney-client privilege does not apply. Indeed, in order to establish the existence of the attorney-client privilege, the party claiming privilege must establish the existence of communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice. *See In re County of Erie*, 473 F.3d 413, 419 (2d Cir. 2007). The party asserting the privilege has the burden to show that a particular communication was intended to remain confidential and was reasonably expected and understood to be confidential. *See In re Asia Global Crossing Ltd.*, 322 B.R. 247, 255 (Bankr. S.D.N.Y. 2005) (quoting *United Sates v. Bell*, 77 F.2d 965, 971 (11th Cir.

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seek "return" of those documents. *See Long v. Marubeni Am. Corp.*, No. 05CIV.639 (GEL)(KNF), 2006 WL 2998671, at *4 (S.D.N.Y. Oct. 19, 2006)(holding that the inadvertent disclosure doctrine did not apply to communications discovered by the defendant employer while reviewing company computers because the plaintiff employees did not "disclose" the communications in discovery.)

1985). A reasonable expectation of confidentiality does not exist when the communication will be communicated over a medium that discloses the communication to third-parties. *In re Horowitz*, 482 F.2d 72, 81 (2d Cir. 1973); *United States v. Finazzo*, 2013 WL 619572, at *7 (E.D.N.Y. Feb. 19, 2013)("A communication cannot be 'intended' to remain confidential, however, when made through a medium that subjects it to disclosure to third parties.").

16. Federal courts, including bankruptcy courts, have almost universally adopted the test set forth in *Asia Global* to determine whether an employee had a reasonable expectation of privacy in communications transmitted through an employer's server or device. *See e.g., In re Reserve Fund Sec. & Derivative Litig.*, 275 F.R.D. 154, 159 (S.D.N.Y. 2011)(utilizing the *Asia Global* test and noting that its use has been "widely adopted").[5]

17. *Asia Global* identifies four factors for determining whether an employee has a reasonable expectation of privacy when transmitting communications over a company device or company server: "(1) does the corporation maintain a policy banning personal or other objectionable use, (2) does the company monitor the use of the employee's computer or e-mail, (3) do third parties have a right of access to the computer or e-mails, and (4) did the corporation notify the employee, or was the employee aware, of the use and monitoring policies?" 322 B.R. 247, 257 (Bankr. S.D.N.Y. 2005).

18. While no single factor is dispositive, courts have often found the first factor, finding that the existence of a workplace policy reserving the right to access and monitor employee communications – rather than showing that employers did in fact monitor employee

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[5] Although federal law controls, Florida state law applies the same analysis. *See Centennial Bank v. Servisfirst Bank Inc.*, 2016 WL 6037552, at *9 (M.D. Fla. Oct. 14, 2016)(applying Florida state law based on diversity jurisdiction and applying the *Asia Global* analysis to find that because the applicable company policy was clear that there was no expectation of privacy, communications by the CEO over the company server with counsel were not privileged even though the CEO claimed that he had the ultimate authority to decide whether or not employee emails would be monitored).

accounts – to be persuasive. *See, e.g., Bingham v. Baycare Health System*, 2016 WL 3917513 (M.D. Fla. July 20, 2016)(finding no reasonable expectation of confidentiality in emails transmitted over employer's email server); *United States v. Finazzo*, 2013 WL 619572, at *7 (E.D.N.Y. Feb. 19, 2013)(noting that a policy with an "outright ban" on personal use of company-issued devices would end the privilege inquiry). That is particularly true when applied to a senior executive of the employer, or an employee who was personally involved in the drafting of the employer's policy. *See, e.g., Miller v. Zara USA, Inc.,* 151 A.D.3d 462, 462 (N.Y. App. Div. 2017)(holding that former general counsel had no reasonable expectation of privacy when he had at least constructive knowledge that the company's employee handbook restricted use of company computers to business purposes).

19. Danny Dosoretz had no reasonable expectation of privacy in communications sent over 21C's email server or utilizing 21C's devices. First, the 21C Employee Handbook in effect at the time of the Dosoretz Emails stated, in relevant parts:

- "21st Century Oncology provides its users with Internet access and electronic communications services as required for the performance and fulfillment of their job responsibilities. Users must understand that this access is for the purpose of increasing productivity and not for non-business activities."
- "21st Century Oncology employees should have no expectation of privacy when using company-owned or company-leased equipment. Information passing through or stored on company equipment can and will be monitored. 21st Century Oncology maintains the right to monitor and review Internet use and mail communications sent or received by users as necessary."
- "The Internet connection and e-mail system of 21st Century Oncology are for business use and employees are expected to conduct themselves accordingly."

Exhibit [G]. 21C thus prohibited the use of company technology for personal purposes by making clear that its use was for business purposes **only**. 21C's notice to its employees that personal use of company resources was prohibited was more explicit than warnings provided by other companies whose policies were found sufficient under the first *Asia Global* factor. *See*

Finazzo, 2013 WL 619572, at *7 (E.D.N.Y. Feb. 19, 2013)(no expectation of privacy when company policy permitted limited and reasonable personal use of company systems but otherwise required use for company business only); *Bingham*, 2016 WL 3917513 (M.D. Fla. July 20, 2016)(no expectation of privacy when company policy allowed "de minimus (very limited) personal use" of company's communication systems and prohibited use for operation of personal business or for personal gain). Moreover, employees subject to the policy were specifically advised that they should have no expectation of privacy over any emails sent or received using company information solutions or hardware, and were explicitly notified employees that 21C could and would monitor such communications.. As the then-CEO of 21C, Danny Dosoretz signed this policy, and was clearly aware of its import. Thus, the first and fourth of the *Asia Global* factors strongly support the conclusion that the Dosoretz Emails are not privileged.

20. Second, Danny Dosoretz was also well aware that 21C could, would and did in fact monitor, collect, and review relevant data on the company's server and devices. For example, Danny Dosoretz knew that 21C was actively monitoring and reviewing emails retained on company devices and incorporated into company servers as part of ongoing investigations and litigations. Those investigations and litigations were active during all relevant times.[6] Danny Dosoretz also received litigation holds pursuant to these actions that expressly informed him that his emails on the company server were being preserved, providing additional notice that he had no expectation of privacy. Thus, the second *Asia Global* factor strongly supports the conclusion that the Dosoretz Emails are not privileged.

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[6] For example, *United States of America, et al. vs. Florida Cancer Specialists P.L., 21st Century Oncology LLC, Dr. Daniel Dosoretz, et al.*, case no. 16-cv-00087, was filed on February 2, 2016 in the U.S. District Court for the Middle District of Florida.

21. Third, Danny Dosoretz took no special efforts or precautions to hinder 21C from accessing his personal emails. In fact, he did exactly the opposite by incorporating his own personal email into the company-owned and operated laptop and its applications. *See Asia Global*, 322 B.R. at 257 & n. 7 ("An employee may take precautions to limit access; offices can be locked, computers can be password-protected, and e-mails can be encrypted."); *Finazzo*, 2013 WL 619572, at *10 (E.D.N.Y. Feb. 19, 2013). Danny Dosoretz returned the company-issued laptop to 21C without encrypting any of these emails, preserving any rights to those private emails and documents or taking any steps to remove any personal information or data that he had stored on his laptop. (de Paz Decl. ¶ 18; Gorczyk Decl. ¶ 13); *See Aventa Learning, Inc. v. K12, Inc.*, 830 F. Supp. 2d 1083, 1106-07 (W.D. Wash. 2011)(finding that any reasonable expectation of confidentiality in a company-issued device was destroyed when an employee returned the device to his employer without asserting privilege). Thus, the third *Asia Global* factor strongly supports the conclusion that the Dosoretz Emails are not privileged.

22. In light of all these facts, it is clear that Danny Dosoretz had no reasonable expectation of privacy over the Dosoretz Emails, and thus the Dosoretz Emails are not privileged.[7] *See Finazzo*, 2013 WL 619572, at *7 (E.D.N.Y. Feb. 19, 2013); *Kelleher v. City of Reading*, No. Civ. A. 01–3386, 2002 WL 1067442, at *8 (E.D.Pa. May 29, 2002)(no reasonable expectation of privacy in workplace e-mail where employer's guidelines "explicitly informed employees that there was no such expectation of privacy"); *In re Reserve Fund Sec. & Derivative Litig.*, 275 F.R.D. 154 (S.D.N.Y. 2011)(no reasonable expectation of privacy in email communications that an employee sent using company email system, where company's policy explicitly stated that employees "should limit their use of e-mail resources to official business,"

[7] Some of the Dosoretz Emails are not privileged for other independent reasons, such as disclosure to a third party.

that company "reserves the right to access an employee's e-mail for a legitimate business reasons or in conjunction with an approved investigation," that employees' email communications would be automatically saved and were subject to review, and employee was aware of these policies.); *Dombrowski v. Governor Mifflin Sch. Dist.*, No. CIV.A. 11-1278, 2012 WL 2501017, at *6 (E.D. Pa. June 29, 2012)(no reasonable expectation of privacy in personal Gmail and AOL emails between an employee and her attorney when emails were found on the employer's computer and network server).

B. The Dosoretz Emails Are Not Privileged Or Legally Protected Under the Crime-Fraud Exception

23. The Dosoretz Emails are also not protected by any attorney-client privilege or the attorney work-product protection because they are subject to the crime-fraud exception.

24. It is well-settled that communications with counsel are not privileged or protected by the attorney work-product protection if they are used to or do perpetrate a crime or fraud. Thus, when the crime-fraud exception is found to apply, both attorney-client and work product protections are eliminated. *In re Grand Jury Subpoena Dated July 6, 2005*, 510 F.3d 180, 184 (2d Cir. 2007); *Meyer v. Kalanick*, No. 15 CIV. 9796, 2016 WL 3189961, at *3 (S.D.N.Y. June 7, 2016).

25. The crime-fraud exception is not limited to only communications with counsel and other documents that constitute technical frauds or crimes. Indeed, "District courts in [the Second] Circuit have long construed the [crime-fraud] exception as reaching some conduct beyond crime and fraud." *Madanes v. Madanes*, 199 F.R.D. 135, 149 (S.D.N.Y. 2001); *Cooksey v. Hilton Int'l Co.*, 863 F. Supp. 150, 151 (S.D.N.Y. 1994)("The exception is triggered if the asserted crime or fraud was the 'objective of the client's communication' with its counsel. And where fraud is asserted, 'the fraudulent nature of the objective need not be established

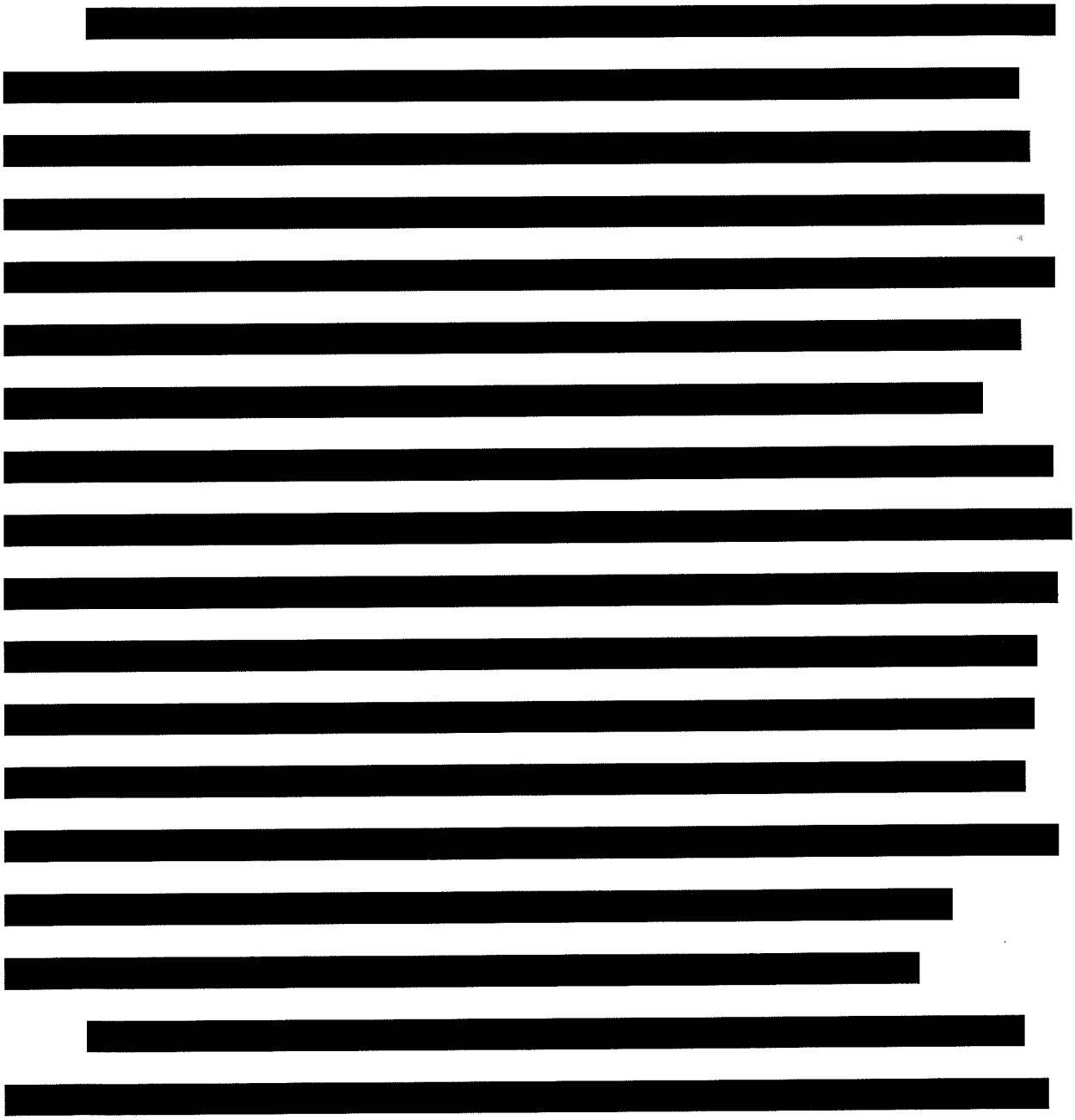
definitively; there need only be presented a reasonable basis for believing that objective was fraudulent.'").

26. Fraud on the court is a type of fraud that is subject to the crime-fraud exception. *See In re St. Johnsbury Trucking Co., Inc.*, 184 B.R. 446, 458 (Bankr. D. Vt. 1995)(holding that an objectively unreasonable pleading filed for the improper purpose of imposing litigation costs on litigants and bankruptcy courts in two venues was not just sanctionable conduct, but could amount to fraud upon the court and ordering submission of relevant documents for *in camera* review).

27. The party invoking the crime-fraud exception must "demonstrate that there is a factual basis for a showing of probable cause to believe that a fraud or crime has been committed and that the communications in question were in furtherance of the fraud or crime." *United States v. Jacobs*, 117 F.3d 82, 87 (2d Cir.1997), abrogated on other grounds by *Loughrin v. United States*, 573 U.S. 351 (2014). Courts evaluating a claim of crime-fraud exception look to whether a prudent person would find that the proffered evidence constitute "a reasonable basis to suspect the perpetration or attempted perpetration of a crime or fraud, and that the communications were in furtherance thereof." *Id.* (quoting *In re Grand Jury Subpoena Duces Tecum,* 731 F.2d 1032, 1039 (2d Cir. 1984)). Courts then evaluate the facts to determine whether the exception applies, potentially following an *in camera* review of the proffered evidence. *Id.*

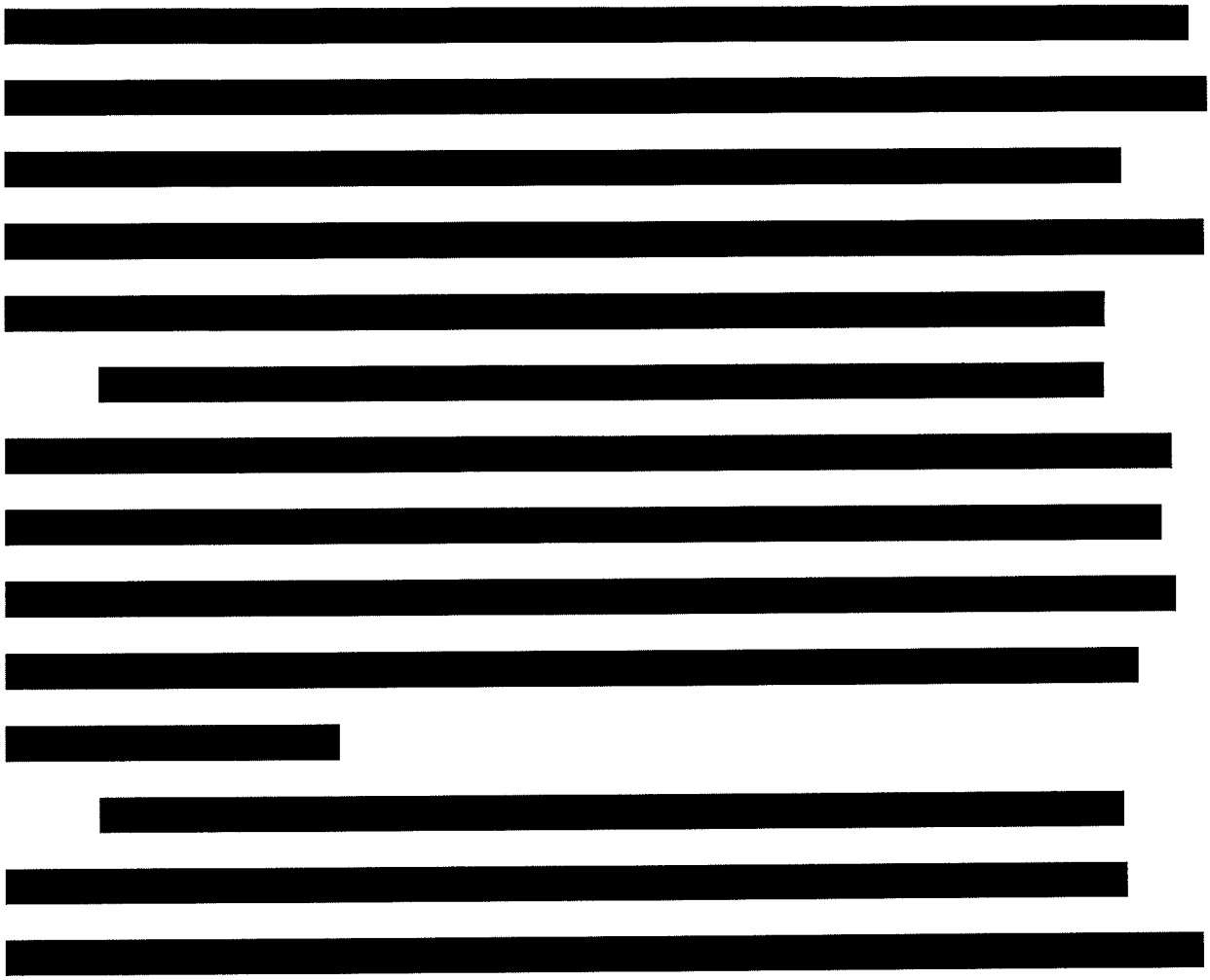
28. The Dosoretz Emails are not protected by any claim of attorney-client privilege or attorney-work product protection because they are subject to the crime-fraud exception. Specifically, the Dosoretz Emails reveal that the Florida Plaintiffs' declarations are fraudulent and that representations made to this Court in Florida Plaintiffs' filings are intentionally

misleading or false. Allowing Danny Dosoretz to assert privilege or any legal protection over those emails would perpetuate a fraud on the court; accordingly, no assertion of privilege or protection can be asserted. An *in camera* review of additional materials is within the Court's discretion, but unnecessary here, where the Dosoretz Emails are non-privileged documents that meet the threshold showing of a perpetration of a fraud on the court.



[redacted]

[8] Notice Of Filing Declarations In Further Support Of Response In Opposition To Motion To Enforce (Doc. 1326) And Response In Opposition To Motion To Stay (Doc. 1328).



34. Accordingly, 21C respectfully requests an Order from the Court confirming that any claim of privilege or other legal protection over the Dosoretz Emails is barred under the crime-fraud exception.

C. If Discovery is Warranted, the Court Should Compel Further Discovery Related to the Dosoretz Emails

35. If the Court denies 21C's Motion for Reconsideration and determines that additional discovery is necessary in this proceeding, 21C requests an order compelling the Florida Plaintiffs, Danny Dosoretz and Shumaker to respond to discovery requests into the Dosoretz Emails and related material. *See Amusement Indus., Inc. v. Stern*, 293 F.R.D. 420, 440 (S.D.N.Y. 2013)(finding that the crime-fraud exception applied, and thus granting a motion to

compel discovery as to communications between a client and attorneys as to subject matter that were in furtherance of a crime of fraud).

CONCLUSION

The Movants respectfully request an order (i) confirming that the Dosoretz Emails are not privileged and (ii), if additional discovery is required by the Court, compelling Danny Dosoretz, Shumaker, and the Florida Plaintiffs to submit to additional discovery related to the Dosoretz Emails.

Consistent with the requirements of F.R.C.P. 37, the Movants have conferred with Florida Plaintiffs' counsel in advance of this filing. Florida Plaintiffs' counsel did not agree to this filing.

DATED: New York, New York
May 28, 2019

SULLIVAN & WORCESTER LLP

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Counsel to the Reorganized Debtors

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
21st CENTURY ONCOLOGY HOLDINGS, INC., *et al.*,[1]	)	Case No. 17-22770 (RDD)
Reorganized Debtors.	)	(Jointly Administered)

ORDER CONFIRMING CERTAIN DOCUMENTS ARE NOT PRIVILEGED AND COMPELLING DISCOVERY

Upon consideration of the *Reorganized Debtors' Motion to Confirm Certain Documents are Not Privileged and, If Necessary, Compelling Additional Related Discovery* [Docket No. ___] (the "**Motion**")[2], and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having considered the Motion, all related pleadings and documents, and the record established in these chapter 11 cases; and the Court having found that due and proper notice and service of the Motion has been given and that no other further notice or service of the Motion need be given; and the Court having found that the relief sought in the Motion is in the best interests of the Reorganized Debtors, the Debtors' estates, their creditors, and other parties in interest; and the Court having found that the relief sought in the Motion is appropriate under the

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1 Each of the Reorganized Debtors in the above-captioned jointly administered chapter 11 cases and their respective tax identification numbers are set forth in the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 30]. The location of 21st Century Oncology Holdings, Inc.'s corporate headquarters and the Debtors' service address is: 2270 Colonial Boulevard, Fort Myers, Florida 33907.

2 Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Motion.

circumstances, consistent with applicable law, and necessary to effectuate the purposes of the Plan, and that good and sufficient cause exists for granting the relief set forth herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Dosoretz Emails, as defined in the Motion to Confirm are not privileged.

3. Claims of privilege over materials related to the subject matter of the Dosoretz Emails are barred.

4. Florida Plaintiffs must respond to discovery requests regarding the Dosoretz Emails and related materials.

5. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

6. This Court shall retain jurisdiction with respect to all matters arising from or related to implementation of this Order.

IT IS SO ORDERED.

White Plains, New York

Dated: _____, 2019

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 17-22770-rdd

- x

In the Matter of:

21st CENTURY ONCOLOGY HOLDINGS, INC.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

May 15, 2019

11:23 AM

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: NAROTAM RAI

HEARING re Motion to Approve (I) ENFORCE THE PLAN AND CONFIRMATION ORDER, INCLUDING THE PLAN INJUNCTION AND THIRD-PARTY RELEASE; (II) HOLDING DR. ARIE PABLO DOSORETZ, DR. AMY FOX, DR. MICHAEL J. KATIN AND DR. JAMES H. RUBENSTEIN IN CONTEMPT; (III) IMPOSING SANCTIONS; AND (IV) GRANTING RELATED RELIEF

HEARING re Declaration of Jeffrey R. Gleit in Support of Motion for Entry of an Order (I) ENFORCING THE PLAN AND CONFIRMATION ORDER, INCLUDING THE PLAN INJUNCTION AND THIRD-PARTY RELEASE; (II) HOLDING DR. ARIE PABLO DOSORETZ, DR. AMY FOX, DR. MICHAEL J. KATIN AND DR. JAMES H. RUBENSTEIN IN CONTEMPT; (III) IMPOSING SANCTIONS; AND (IV) GRANTING RELATED RELIEF (related document(s)1326).

HEARING re Opposition to Reorganized Debtors' Motion for the Entry of an Order (1) Enforcing the Plan and Confirmation Order, Including the Plan Injunction and Third-Party Release; (II) Holding Dr. Arie Pablo Dosoretz, Dr. Amy Fox, Dr. Michael J. Katin and Dr. James H. Rubenstein in Contempt; (III) Imposing Sanctions; and (IV) Granting Related Relief (related document(s)1326) filed by Steven M. Berman on behalf of Arie Pablo Dosoretz, Amy Fox, Michael J. Katin, James Rubenstein. (document #1333)

HEARING re Reorganized Debtors' Reply to Plaintiffs' Response in Opposition [Docket No. 1333] and In Further Support of the Reorganized Debtors' Motion to Enforce Docket [No. 1326] (related document(s) 1326) filed by Jeffrey R. Gleit on behalf of 21st Century Oncology Holdings, Inc. (document# 1342)

HEARING re Motion to Stay Proceedings in the Florida Action Pending Resolution of the Reorganized Debtors Motion to Enforce

HEARING re Opposition to Reorganized Debtors' Motion for the Entry of an Order Staying Proceedings in the Florida Action Pending Resolution of the Reorganized Debtors' Motion to Enforce (related document(s)1328) filed by Steven M. Berman on behalf of Arie Pablo Dosoretz, Amy Fox, Michael J. Katin, James Rubenstein. (document #1334)

HEARING re Affidavit /Notice of Filing Declarations in Further Support of Response in Opposition to Motion to Enforce and Response in Opposition to Motion to Stay (related document(s)1326, 1328) Filed by Steven M. Berman on behalf of Arie Pablo Dosoretz, Amy Fox, Michael J. Katin, James H. Rubenstein (document #1335)

HEARING re Letter /Notice of Filing Appendix in Further Support of Response in Opposition to Motion to Enforce and Response in Opposition to Motion to Stay (related document(s)1326, 1328) Filed by Steven M. Berman on behalf of Arie Pablo Dosoretz, Amy Fox, Michael J. Katin, James H. Rubenstein (document #1336)

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P R O C E E D I N G S

THE COURT: Okay. In Re 21st Century Oncology?

MR. GLEIT: Good morning, Your Honor. Jeffrey Gleit, Sullivan & Worcester, on behalf of the 21C, the reorganized Debtors. I'm here today with my co-counsel, Jonathan Terzaken, from Simpson, and then the general counsel of 21C, Amy Garrigues.

THE COURT: Okay. Good morning.

MR. TERZAKEN: Good morning, Your Honor.

MR. BERMAN: Good morning, Your Honor. Steve Berman, Ken Klee and Mark Heise, on behalf of the four physicians.

THE COURT: Okay. Good morning.

MR. BERMAN: Good morning.

THE COURT: Everyone can sit down, unless they're speaking. Based on our telephone conference earlier this week on Monday, this is a status conference, as opposed to an oral argument on 21st Century's motion to enforce the plan and confirmation order and enjoin the four doctors.

At that conference, it was agreed that the four doctors would not proceed with the Florida litigation, pending a ruling on the Debtors' motion to enforce, and that agreement gave me the comfort that we could focus today on what sort of discovery is warranted in connection with the Debtors' motion in front of me.

So that's, I take it, the subject of this conference. Okay.

MR. GLEIT: Yes, Your Honor. And thank you. We did have a call on Tuesday. Mr. Terzaken and I and counsel for the Florida plaintiffs had a call to discuss today's hearing, potential discovery. While at a high level, certain things may have been potentially agreed upon, there is a fundamental dispute, I think, which we do want to raise today, and which we touched upon in our reply. And a lot of it has to do -- will be with relevance, scope. And I have Mr. Terzaken here and he's going to address the Court with the point.

But I think there's a legal threshold question we would like Your Honor to decide, which I think then would help govern any discovery going forward. I think the legal threshold is not for argument today, but it would be -- it's almost like a motion to dismiss, and it could be argued in a week. And it has to do with their employment agreements and non-competes, when they're entered into, any resets of those.

And the issue -- the argument would relate around if there's a claim and when it arose. And that would then dictate when discovery -- what discovery, if any, would be needed. Because if we don't address that issue, what is going to happen is we're going to get hit with a discovery

request that you would normally get in the antitrust action, which will be broad and --

THE COURT: All right. And you raised this point in the reply memorandum.

MR. GLEIT: Yes, Your Honor.

THE COURT: And I gave it some thought also. It seemed to me that the discrete issue that you're addressing now is a non-bankruptcy issue. It's an issue of federal law and Florida law.

And unless both sides want me to decide that issue -- and it wasn't clear to me; that was going to be my first question that I was going to ask today, whether they do or they don't -- clearly the Debtors do; I don't know whether the doctors do or not -- my inclination was to not decide that issue if I determined that the bankruptcy plan, the confirmation order, precluded it being raised, I would decide it in that context, but not as a matter of antitrust and Florida law.

And it would seem to me, then, that -- assume for the moment that I decided that the issue raised by the doctors as to post-effective date conduct is an issue that's not barred by the plan and confirmation order. It would seem to me then that that would go to the Florida court and you could make your motion to dismiss then and say, this isn't really a case where they have standing. And the

Florida court would decide that issue and then, if the Florida court decided against you, there would be discovery on that issue.

MR. GLEIT: Now, I am going to turn it over to Mr. Terzaken. I actually thought Your Honor might raise some of these concerns at the very least. And the view -- our view is that this is an issue that you determine all the time. It's really the timing of when a right arises and --

THE COURT: No, but I'm trying to distinguish between two different things.

MR. GLEIT: Sure.

THE COURT: Yes, if -- the bankruptcy issues include what is released, what isn't released, what's the effect of assuming the contracts under the plan. You know, all those issues are bankruptcy issues. And that includes, you know, what is -- that includes the timing issue.

But it may -- it is certainly conceivable to me that I would conclude that there are allegations that there are post-effective breaches or events that give rise to and a right to rescind or to assert a claim under the antitrust laws that could be asserted as a defense that are entirely post-effective date for bankruptcy purposes.

At that point, unless the parties want me to decide that issue too, I think that should go to the Florida court. I mean, conceivably, they could agree to that

because it might be more efficient, although it might not be. So, that's sort of where I'm coming out.

But clearly, the bankruptcy issues include whether something is pre or post, and what the effect of the release is. So, I think what I'm saying to both sides here is that the issue of the doctors' standing, at least on its face, doesn't appear to me to be a bankruptcy issue, because that's really an antitrust Florida law determination.

And I think I can give a sufficient ruling on the bankruptcy issues that the Florida court would know what's still live and what isn't at that point.

MR. GLEIT: I understand, Your Honor. If Mr. Terzaken may just speak briefly?

THE COURT: Okay.

MR. GLEIT: All right. Thank you, Your Honor.

MR. TERZAKEN: Good morning, Your Honor. And thank you for raising these issues. You've hit on exactly the issue that we appear to have a disagreement in terms of what's actually relevant to this suit.

THE COURT: Okay. All right.

MR. TERZAKEN: We've obviously taken a position in our papers that this claim arises as of the point of the execution of the contracts.

THE COURT: Right.

MR. TERZAKEN: They've taken the position that you

can look at today's facts and retroactively essentially disregard those contract terms. But those are the very different positions.

THE COURT: Well, but those two positions subsume more than one argument.

MR. TERZAKEN: Agreed.

THE COURT: And I'm saying I can -- I'm quite comfortable deciding certain of those arguments, but not the argument -- unless the parties want me to -- that you say is a no-brainer; they don't have standing because the facts they're alleging that are new aren't really new for purposes of the antitrust laws and the Florida statute. And they say no, they are totally significant as post-effective date events.

So, the bankruptcy issues I can decide is, you know, what was at issue before the Court and the parties when the plan was being confirmed? That's a whole set of other arguments that the doctors make. They say, you know, no, those issues really work before the Court at that point. Because, you know, citing Orion Pictures and all sorts of other arguments. Those issues I can decide.

What I'm unwilling to decide unless, again, the parties want me to, is the first point that I described to you, which is your standing point, which is that the separate argument that the doctors make that there are post-

petition events that occur that independently or separately give rise to a right under the antitrust laws and under the Florida law, that's a set of -- that's a dispute that I think, unless the parties want, because of judicial economy, me to decide, should be decided by Florida court.

MR. TERZAKEN: And that's an --

THE COURT: I think it's -- I mean, look, I think it's related to the jurisdiction, but I don't... You know, there's a point where enough is enough, and you've got to move on.

MR. TERZAKEN: And I understand the Court's differentiation, and just so I can articulate it for myself, because I think we understand where you're heading with this, and we certainly agree with the positions.

The threshold legal issue we really want the Court to decide before we even get to the relevance of any of this alleged post-confirmation conduct is the question about whether or not these particular non-compete provisions, which were assumed as part of these executory contracts before this Court, were valid at the time they were executed and became effective.

THE COURT: Yeah. No, I think that's an issue that I can decide, and should decide.

MR. TERZAKEN: That's the issue we would --

THE COURT: That's fine.

MR. TERZAKEN: -- we would like to -- when we had the conference about going into discovery, the dispute we've been having is, we would say, because that is the issue, which is a pure question of law, that we don't need to get into what these other legend post-confirmation acts are or aren't.

THE COURT: I think that's right. Although I'm not sure it is a pure issue of law. I think that the parties might well want to consider discovery, which is also a fact issue that the doctors raise as to what was the context, the understanding, et cetera, when the contracts were assumed.

MR. TERZAKEN: And if that's correct, Your Honor, we can have that discussion. The discussion that we've been having about discovery is they would like to dig into the company's current HR files, their current contracts with different professional organizations, other things that are highly competitively sensitive to this organization that really have --

THE COURT: Well, they --

MR. TERZAKEN: -- no relevance to the core question.

THE COURT: They can assert that those issues exist. But I'm not prepared to determine those today. I think those would be for a state court -- I mean, I'm sorry,

for the -- well, it's now a federal court, to determine.

MR. TERZAKEN: So, the issue, I guess, that our request to the Court -- and we're happy to argue this point today or schedule a hearing as soon as it is convenient for the Court -- what we'd like to be heard on in order to frame the relevance discussion about any alleged discovery that's necessary is whether we -- frankly, we have what we need.

If this is about the executory contracts and when those contracts were executed, whether there were any revisions, amendments, et cetera, to those contracts, what they understood when they signed those contracts, I think that's all in the record.

THE COURT: Well, I don't know. But anyway, I've laid out how I'm approaching this, but I'm happy to hear from the other side too.

MR. HEISE: Good morning, Your Honor. Mark Heise, on behalf of the doctors. The way that Your Honor has framed the issue, I think is accurate. But I do think just for a moment we need to place this in context, because what counsel for 21C is relating to you is sort of inconsistent with what has previously taken place in this case.

You know from when the motion to reopen was filed that the question was whether you were going to reopen because they wanted, as they told you at the time, to enjoin the Florida action as violating this Court's confirmation

order and injunction.

THE COURT: Right.

MR. HEISE: And when your order granted that motion to reopen, it was very narrow. It said you're going to consider whether they can enjoin that Florida action. And so, the question at that point was when were the overt acts that Plaintiffs have alleged in this case? Were they pre-confirmation or pre-effective date, so that they would not be allowed to proceed in Florida? Or were they post-effective date, so that the Florida court could consider not just the non-compete agreements but the entire panoply of anticompetitive conduct that was alleged in the complaint. Because they always want to just focus on the non-compete. That is only a portion of the anticompetitive behaviors.

So, at that point in time, the battle lines were drawn. When did these overt acts occur? And if I may approach, Your Honor, just to provide -- because we outlined on our call with them yesterday the discovery that we thought would be necessary -- if I may hand this, Your Honor?

THE COURT: Okay.

MR. HEISE: At that time, when those battle lines were drawn and 21C set forth their motion to enforce or enjoin, they were very clear as to what they wanted. They said on at least seven occasions -- and I've highlighted a

couple of them at the top of this document -- that basically all of the alleged misconduct occurred before the petition date; all of it was prior to the effective date. They said it seven different ways so there could be no confusion as to what their position was.

And in our response, as Your Honor knows, we laid out a variety of things that occurred post-effective date. The first and most obvious was the non-competes all renewed after the effective date, and under Florida law, the Marciano case that we cited, there is clear --

THE COURT: Can I interrupt you? I just want to make clear -- I thought I may have -- and I know people come to these conferences primed to say stuff, even if the Court indicates it's not necessary.

There is a distinct possibility that the plan and confirmation order and the transactions approved as part of the plan, including the assumption of the contracts, precludes the doctors proceeding under all or some of the theories that they have raised in the Florida action.

I have concluded I need to -- even if it's not all, I need to decide that issue first. And everything that's not precluded, I'm saying can go forward in Florida.

MR. HEISE: And we agree with that, Your Honor.

THE COURT: Okay. So, I think we're just focusing on what discovery is relevant to what is precluded.

MR. HEISE: And that's what -- if you look at what I put here, the first example was this 21st Century contract with the Lee Memorial Hospital system.

THE COURT: All right. But again, they are going to say all of this is irrelevant because you don't have standing to raise these issues. And that is a motion to dismiss type of defense. If you were not precluded by the plan and disclosure statement on anything, then it would only be arguing a partial motion to dismiss defense.

So, my view on this is that you don't have to convince me of these other points because that issue, whether you're right or they're right, is not my issue. It's the Florida courts issue --

MR. HEISE: Right.

THE COURT: -- on standing. And your issue that, no, this is all part of a whole panoply of anti-competitive behavior, that's not my issue. My issue is what, if anything, did the doctors release or are estopped either by statutory or judicial estoppel. That's it.

MR. HEISE: I understand and agree with what you're saying, Your Honor.

THE COURT: Okay.

MR. HEISE: But what we've heard consistently from 21C is that nothing we have set forth is pre-effective date.

THE COURT: Well, but that's --

MR. HEISE: I mean, it's just post-effective date.

THE COURT: I appreciate you're saying something else. They're now raising a non-bankruptcy defense to that. And I'm saying, okay, all those issues... I will decide the bankruptcy issues, recognizing that those other issues exist, without deciding them, without prejudice, you know, et cetera. But it just seems to me that it would be an overreach on my part to decide those issues. And you don't want me to decide those issues.

MR. HEISE: No. That's why we filed --

THE COURT: So, there's no reason why I should be supervising discovery over those issues because there's a separate gatekeeper, which isn't my issue, which is whether you have standing to raise them. And that's all a district court issue. I just don't want to get into that.

MR. HEISE: Understood, Your Honor.

THE COURT: So, I think what we should be talking about here is what discovery, if any -- and I think there may well be a right to it -- should be had with respect to the context of the plan and these doctors' involvement in it.

I mean, one of the arguments, clearly, that the Debtors have been making is that this group is, you know, not a sort of outsider group of doctors. They're like front and center in the whole thing. I don't know if that's right

or not.

MR. HEISE: It's not, and --

THE COURT: Well, I know you take that position.

MR. HEISE: Right.

THE COURT: If people want discovery on that, what people understood at the time, you know, they should do that.

MR. HEISE: Well, we --

THE COURT: And that's a much briefer bankruptcy focus type of discovery.

MR. HEISE: And that was one of the topics that we listed with them yesterday was that --

THE COURT: Okay.

MR. HEISE: -- they have repeatedly in their papers said a variety of things. We need --

THE COURT: I know.

MR. HEISE: -- to know where they're coming up with this --

THE COURT: And I'm fine with that.

MR. HEISE: -- these claims.

THE COURT: I'm fine with that. I mean, I don't want to turn one case into another case, but in the Lawsky Frontier case we had discovery about what the parties understood. You know, one site argued it was irrelevant because the plain meaning governance. But I concluded it's

more efficient to have the discovery and just deal with it.

You've raised factual issues. I don't think the Debtors are necessarily... I think they are asserting these issues as if they're uncontroverted facts. I think you should have some limited discovery on that and then we decide whether I want to hear a witness or two on it.

MR. HEISE: May I just ask a point of clarification?

THE COURT: Sure.

MR. HEISE: Because as I've outlined, at each turn when we say this was post-effective date conduct, they've always retorted, no, it's all longstanding. Those are issues that you do not want to have discovery on?

THE COURT: Well, I --

MR. HEISE: Or --

THE COURT: Look, I think that there is a distinct bankruptcy interpretation that the Debtors want me to adopt as to what it means when one does not oppose the assumption of a contract. And I can deal with that. It doesn't -- but I think what you're asserting is something very different, which is that... Well, let's start with the contracts. That these are different contracts than the ones that were assumed. All right?

MR. HEISE: Correct.

THE COURT: I can deal with that issue without

discovery. You can show me that they're different contracts.

MR. HEISE: That's an easy one. The more difficult ones --

THE COURT: Secondly, you are saying that there are events that occurred post-assumption that are highly relevant to the declaratory judgment action to be relieved of these contracts.

MR. HEISE: Correct.

THE COURT: That is -- you say those occurred after the fact. They say you can't rely on that anyway because you don't have standing. They also say, well, they were occurring before the fact, too. And you say doesn't, right, because it's also occurring after the fact.

I can decide the relevance of that latter point, if it's a continuum, you know. On the other hand, if the issue is these are brand-new facts that are happening afterwards, to me, that's an issue for the District Court.

MR. HEISE: But on the point you just raised of a continuum --

THE COURT: Right.

MR. HEISE: -- we're unable to address that without discovery.

THE COURT: No, but I could -- I don't need to decide that issue. I can just say the Debtors are right,

that if it's a continuum it doesn't matter; or the doctors are right, that because it's a continuum, there is no res judicata, there's no statutory effect because it's continuing. I can decide that issue. I don't need to decide what continuation is.

MR. HEISE: But we're not alleging it's a continuation. We're alleging it's a new overt act.

THE COURT: Well, if it's all new then that can be decided in the state court. I don't --

MR. HEISE: I agree with that. But my concern was, based upon their pleading, that everything was prior to the effective date --

THE COURT: No, I'm not going to be making findings as to that. I'm just going to be saying, to the extent it is prior, it's X; to the extent it's a continuum, it's X. You know, whether it's barred or not, or to the contrary, you know? To the extent that it is something else, it's not barred.

MR. KLEE: Let me address it.

MR. HEISE: Sure.

MR. KLEE: Your Honor, Kenneth Klee, from Klee, Tuchin, Bogdanoff & Stern, for the doctors.

I think I understand where the Court is going, and that the Court's order will not preclude any Florida determination on post-effective date actions, and whether

they can be brought to standing, and the existence of them, to focus the bankruptcy discovery. Is that right, Your Honor?

THE COURT: Yeah.

MR. KLEE: Yeah. And to be clear for the record, the doctors don't want to consent to have those issues --

THE COURT: Right.

MR. KLEE: -- decided in this court.

THE COURT: And so, as far as I'm concerned, why should I be supervising the discovery?

MR. KLEE: Right. You shouldn't.

THE COURT: Right.

MR. KLEE: But you should supervise the bankruptcy discovery.

THE COURT: Right.

MR. KLEE: And the bankruptcy discovery should focus on who got notice of what, and who was running the company at plan time that's been put into play, and what was assumed and what wasn't.

THE COURT: Yeah.

MR. KLEE: If there were separate noncompete agreements that weren't assumed --

THE COURT: No, I agree.

MR. KLEE: -- that the Court needs to know.

THE COURT: All of the bankruptcy content, what

people understood this to be --

MR. KLEE: Yes.

THE COURT: -- you know, that's fine.

MR. KLEE: And who was released and who wasn't.

THE COURT: Yes.

MR. KLEE: Yes. So, those would be the issues that would be right for discovery.

THE COURT: Right.

MR. KLEE: And that's what we'll focus on.

THE COURT: Okay. All right, that's fine.

MR. GLEIT: And I'm sure it goes without saying, but it's, you know, two-way discovery, because obviously the knowledge (indiscernible) --

THE COURT: Well, I'm assuming "we" was everyone that's sitting at the two tables in front of me.

MR. GLEIT: Yeah. I'm assuming it was unnecessary, but I just wanted to --

THE COURT: Yeah. So, I think -- I don't know if you, in your discussions, talked about how long you think that would take? To me, it's not a long process, although these are busy people. So, you know, I don't know. I don't know how long it will take.

MR. HEISE: What we had talked about, Your Honor, was giving reciprocal discovery to each other by the end of Friday.

THE COURT: The paper discovery.

MR. HEISE: Correct.

THE COURT: Right.

MR. HEISE: You know, whatever depositions we want, whatever --

THE COURT: That's two days from now. Is that -- really? Or is it -- can you do that?

MR. HEISE: My understanding was Your Honor had wanted to get this resolved in the next two to four weeks.

THE COURT: Oh, I do. I mean, I just don't want you to set unrealistic --

MR. HEISE: So --

THE COURT: -- goals for yourself.

MR. HEISE: Then, you know what, you're probably right. So, let me take your guidance. Let's say we would exchange discovery next --

THE COURT: A week from today.

MR. HEISE: -- next week.

THE COURT: Yeah.

MR. HEISE: And then to the extent we can work out resolution, we'll immediately contact you to see what the problems are. But hopefully, we won't have to come before you until we get to our next hearing.

THE COURT: So, you're not willing to take a deposition, it's just going to be paper?

MR. HEISE: No, no. We're going to take depositions.

THE COURT: By next week?

MR. HEISE: No. We're going to notice the depositions of who you want.

THE COURT: I got it. I see.

MR. HEISE: They may object, et cetera. If we can't work it out, then we'll come before you and say this is why we need X, Y or Z person.

THE COURT: All right. Okay.

MR. KLEE: Your Honor, I think --

THE COURT: I misunderstood you. I thought you were going to actually exchange paper discovery --

MR. HEISE: No, no. It's --

THE COURT: All right.

MR. HEISE: -- the actual request.

THE COURT: I've never known any litigator to do that.

MR. KLEE: Your --

THE COURT: Bankruptcy lawyers do that every now and then.

MR. KLEE: Your Honor, I think both sides want to do this expeditiously.

THE COURT: Right.

MR. KLEE: If we can get our discovery done within

the next month, we could have something on for hearing in this court by mid-June.

THE COURT: Okay. That's --

MR. KLEE: And that's --

THE COURT: I'm fine with that.

MR. KLEE: That's faster than litigators like to proceed, but bankruptcy lawyers can do it.

THE COURT: Okay.

MR. KLEE: And if that's okay with the Debtor, we'll have to co-process, and not everybody can attend every deposition --

THE COURT: You basically have 30 days for discovery, subject to unanticipated events.

MR. GLEIT: From our perspective, this is a very important issue to the company.

THE COURT: Right.

MR. GLEIT: And if it were possible to do it sooner, we would appreciate --

THE COURT: Thirty days is pretty quick. As I understand it, everything is on hold for that 30 days, right?

MR. KLEE: That's correct, Your Honor.

THE COURT: So...?

MR. KLEE: The parties will agree to a standstill in the Florida litigation.

THE COURT: Right.

MR. KLEE: And we did notify the court in the Florida litigation of our standstill. We're working out papers to file with the Florida court.

THE COURT: Okay.

MR. GLEIT: Your Honor, 30 days works for the Debtors, Your Honor.

THE COURT: All right. And then, so --

MR. KLEE: And it doesn't even have to be a full 30 days. We could set a hearing for the week of June 12th or June 10th, June 17th --

THE COURT: Well, you'll have to get a date from Ms. Lee.

MR. KLEE: Yeah, exactly.

THE COURT: And --

MR. KLEE: But something like that, so they can have their hearing.

THE COURT: Okay.

MR. GLEIT: Okay. I appreciate that, Your Honor. So, that actually, I think, is a fair compromise.

THE COURT: Okay. And now as far as the hearing goes, this would be an evidentiary hearing, although it's not going to be an enormous body of evidence. And as I think you all know, my practice for evidentiary hearings is to take direct testimony of witnesses who are under your

control by declaration or affidavit submitted a week before the hearing, and then having them there in person for cross and redirect. Obviously, if someone's not under your control, then you have to subpoena them and I'll hear live direct.

I also require the parties to meet and confer and agree, use their best efforts to agree, and agree on the admissibility of his many exhibits as they can, and give me a joint exhibit book of agreed admitted exhibits, again, a week in advance of the hearing so that we don't have to go through all of that, which doubles the amount of time.

MR. GLEIT: I will work with Mr. Klee on that. And I understand.

THE COURT: Okay.

MR. GLEIT: I know, Your Honor -- and I might have missed it when we were conferring -- but you also have a form of pretrial order. Do we need that for this?

THE COURT: That's basically it.

MR. GLEIT: Okay. Fair enough. I just --

THE COURT: You can get that off the website, but that's -- we've covered the three things in it, the discovery cutoff date. It does have a final pretrial conference, which I don't think we need, although you can build that in if you want to. And then the submission of the witness statements and the joint agreed evidence binders

--

MR. GLEIT: I think we'll be able --

THE COURT: -- or binder.

MR. GLEIT: We should be able to agree on a lot of the documents.

THE COURT: Okay.

MR. GLEIT: I would be shocked if we --

THE COURT: Okay.

MR. GLEIT: -- are not.

THE COURT: Now, I do have to say Ms. Lee is complaining that there's not a lot of time in June, but she'll make time for you all. That's my problem, you know, unfortunately.

MR. KLEE: Well, it's our problem too, Your Honor.

THE COURT: Well, it's your problem too, but I understand that, and I will tell her that she should find a date for you that's consistent with what we've discussed.

MR. GLEIT: Okay. Thank you very much, Your Honor.

THE COURT: Okay.

MAN: Thank you.

THE COURT: Okay, great.

ALL: Thank you, Your Honor.

(Whereupon these proceedings were concluded at 11:55 AM)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

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Date: May 17, 2019

EXHIBIT B

(FILED UNDER SEAL)

EXHIBIT C

(FILED UNDER SEAL)

EXHIBIT D1

(FILED UNDER SEAL)

EXHIBIT D2

(FILED UNDER SEAL)

EXHIBIT E

(FILED UNDER SEAL)

EXHIBIT F1

(FILED UNDER SEAL)

EXHIBIT F2

(FILED UNDER SEAL)

EXHIBIT G

(FILED UNDER SEAL)